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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: IB Docket No. 96-220

Dear Mr. Caton:

Transmitted herewith are an original and four (4) copies of the "Comments of Iridium LLC" in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate with this office.

Very truly yours,

Patricia A. Mahoney

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Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

DEC 20 1996

In the Matter of)
)
Amendment of Part 25 of the)
Commission's Rules and Policies)
Pertaining to the Second Processing)
Round of the Non-Voice,)
Non-Geostationary Mobile Satellite Service)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

IB Docket No. 96-220

To: The Commission

COMMENTS OF IRIDIUM LLC

Iridium LLC ("Iridium") hereby respectfully submits its comments in response to the Commission's Notice of Proposed Rule Making, FCC 96-426 (released October 29, 1996) ("NPRM"), in the above-captioned proceeding:

Iridium's comments are limited to two aspects of the Commission's NPRM: (1) the Commission's "new entrant proposal," a tentative decision to exclude current Little LEO licensees from eligibility in the second round of Little LEO application processing; and (2) the Commission's request for comments on the possibility of using competitive bidding/auctions to select licensees from among mutually exclusive MSS applicants. As is discussed below, the Commission's new entrant proposal fails to consider fully the implications of one fundamental characteristic of the systems at issue: they are global systems. Both of the Commission's proposals addressed herein, if adopted, have the potential of establishing dangerous precedent for other satellite services and systems, particularly those that operate regionally or globally.

I. The New Entrant Proposal

In its NPRM, the Commission proposes to award licenses in the second Little LEO processing round only to new entrants. A “new entrant” is proposed to be defined as “a pending applicant who is not a Little LEO licensee or an affiliate of a Little LEO licensee.” NPRM, slip op. at 6, ¶¶11,13. If this proposal is adopted, the Commission will dismiss all Little LEO applicants that do not meet this criterion when the proposed rule becomes effective. Id. at 8, ¶18. Thereafter, the Commission will consider allowing existing licensees to be eligible for additional spectrum if the U.S. secures additional spectrum allocations for the Little LEO mobile satellite service at a future World Radio Conference and if the existing licensees can demonstrate the need for additional capacity to meet customer demand. Id. The articulated rationale for this proposed new policy is as follows:

“We propose to exclude current licensees from participating in this proceeding because competition in the Little LEO marketplace may be limited if an existing licensee obtains additional spectrum thereby excluding a new licensee from entering the Little LEO market. Once we have granted licenses in this proceeding, there will not be sufficient spectrum to support additional Little LEO systems in the U.S. market. Therefore, in order to promote competition in the Little LEO market, we propose to maximize entrants.”

Id. at 6, ¶12.

While it is not a Little LEO applicant or licensee, Iridium opposes this proposal because it creates a disturbing precedent that could have substantial implications for satellite systems and services. If the new entrant policy were to become a general policy in the satellite services, there could follow several serious consequences. Non-U.S. systems competing with U.S. licensed systems would know that U.S. licensed systems have a permanent limited capacity and will not be modifying their systems to expand capacity, services, or features. A U.S. licensed system might well end up as a hobbled

competitor in the global market place. The investment and business community might be deterred from investing in U.S. satellite systems and services (already a costly, risky venture), because it would be a given that the systems can not be expanded to meet demand, to take advantage of technological improvements, or to remain competitive with non-U. S. systems. U.S. companies might ultimately be convinced that the only way to improve their systems is to seek a license for their space segment for later generation systems from another country. While Iridium has no direct interest in the Commission's action on any of the pending Little LEO applications, Iridium opposes the adoption of any policy that precludes issuance of a license to an applicant that has an interest or affiliation with any other licensed satellite system.

Moreover, there is no need for such a policy in order to ensure that competition exists. The Commission has already determined that the existing Little LEO licensees will face substantial competition in the market for their services. When the Commission considered whether to impose common carrier treatment on Little LEO licensees, it expressly recognized that the then-pending applicants would face substantial competition:

"[C]ompetitive radiolocation and message services already exist, a competitive geostationary mobile-satellite service system [AMSC] has been authorized and is being built, and a rulemaking is underway to license additional mobile-satellite systems in other frequency bands. Accordingly, it appears that sufficient competitive capacity is or will be available to assure the public of ample access to these types of services."¹

More importantly, the Commission's proposal ignores or overlooks the fact that the Little LEO systems are global systems that face competition not just from terrestrial

¹ See Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Non-Voice, Non-Geostationary Mobile Satellite Service, Notice of Proposed Rulemaking, 8 FCC Rcd 6330, 6337 (1993). See also Amendment of the

services and other U.S. Little LEO systems but also from operators whose systems are licensed or proposed to be licensed initially by other countries. The Commission assumes that only U.S. systems will be competing in the U.S. market. However, if U.S. systems hope to gain access to other markets, and in light of positions the U.S. has taken in the World Trade Organization (WTO) negotiations on basic telecommunications services and in the FCC's DISCO-II proceeding,² the U.S. must anticipate that there will be non-U.S. systems³ competing with the U.S. licensed systems not only globally but in the U.S. market as well. Thus, the U.S. should not, in the interest of promoting competition, adopt a policy that may prevent U.S. systems from being truly competitive.

Given the diversity of services that can be provided via satellite, it makes no sense to deny a license based on ownership of the satellite system.⁴ If, notwithstanding the

Commission's Rules to Establish Rules and Policies Pertaining to a Non-Voice, Non-Geostationary Mobile Satellite Service, Report and Order, 8 FCC Rcd 8450, 8457(1993).

² See Notice of Proposed Rule Making in IB Docket 96-111, Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, FCC 96-210 (released May 14, 1996)("DISCO-II NPRM").

³ In the Big LEO service, for example, the U.S. licensed systems face a formidable potential non-U.S. competitor that is likely to obtain more spectrum than the three U.S. licensed systems have combined.

⁴ In those few services where diversity of ownership has historically been considered relevant, such as broadcasting, there has generally been a perceived nexus between the diversity of ownership and the diversity of viewpoints expressed in programming, a First Amendment consideration not relevant to the Little LEO services. The one satellite service where an ownership cap has been imposed is the Direct Broadcast Satellite (DBS) Service, where programming content is relevant and where the service is a domestic service. The ownership cap that was imposed in DBS was on a one time basis, for that auction, and precluded only licensees already holding a full-CONUS orbital slot from participation in the auction. The Commission specifically declined to impose permanent spectrum ownership limits. See Revision of Rules and Policies for the Direct Broadcast Satellite Service, Report and Order, 1 CR 928, 946-47 (1995) ("[W]e do not believe that the public interest would be furthered by freezing this industry structure through a rule permanently precluding future channel combinations at multiple full-CONUS locations.

foregoing, the Commission adopts its new entrant proposal, the Commission should make clear that its action is limited to the Little LEO applicants and is not intended to and will not have any precedential effect for any other satellite service.

One other aspect of the Commission's new entrant proposal is disturbing. The Commission notes that currently none of the authorized three Little LEO licensees is operating at full capacity, yet all licensees have requested additional spectrum. The Commission tentatively concludes that it is not in the public interest for this Commission to hold additional spectrum for existing licensees on the basis of speculative long-term traffic projections. This view ignores the scarcity of spectrum, the long lead time necessary to construct and deploy a LEO system, and the Commission's own policies that force applicants to file for blocks of spectrum during brief windows or risk being forever precluded from having any system in a particular frequency band. Iridium opposes the Commission's tentative conclusion and asks the Commission to reexamine it.

II. Competitive Bidding Proposal

In its NPRM, the Commission recognizes that the "use of competitive bidding to award licenses for global systems appears to raise a significant number of extremely difficult issues." Nevertheless, the Commission seeks comment on whether, if faced with mutually exclusive applicants for Little LEO licenses, it should use auctions to award licenses.

In examining its options, the Commission seemingly rejects all options but auctions. The Commission notes that it lacks authority to conduct lotteries and simply asserts that

Thus, the rule we adopt leaves us free to evaluate future transactions on a case-by-case basis...") Id. at 939. In contrast, in the instant proceeding, the Commission is proposing a permanent limit on licensee ownership that could lock-in the structure of the Little LEO industry for years to come.

“[c]omparative hearings have resulted in years of delay in licensing, without any assurance that the licenses will ultimately end up in the bands of those that value them most highly.” Id. at 29, ¶82.⁵ The Commission’s experience with comparative hearings is principally with hearings for new broadcast facilities. But there is no reason to believe that a comparative procedure involving satellite applicants would in any way resemble a comparative proceeding involving television or radio broadcasting applicants or that issues that were vigorously contested in a broadcast comparative proceeding would ever even be relevant in a satellite comparative proceeding. The Commission has never seriously considered whether a comparative process could be fashioned for mutually exclusive satellite applicants, so it is not clear to Iridium that this option should be summarily rejected by the Commission – particularly when the alternative the Commission is willing to consider (auctions) poses such serious potential consequence for the satellite industry.

Moreover, while the NPRM seems to imply that competitive bidding is the only option, Iridium does not agree that the Commission even has the authority to conduct auctions in this Little LEO proceeding. As the NPRM recognizes, in order to employ an auction procedure, the Commission must find that the use of competitive bidding will promote certain statutory objectives: 1) the development and rapid deployment of new technologies, products, and services; 2) the promotion of economic opportunity and

⁵ While Iridium is not advocating that the Commission should use comparative hearings, Iridium does challenge the Commission’s assertions or conclusions about comparative hearings for satellite services. There has never been a comparative hearing between mutually exclusive satellite applicants; and, to the best of Iridium’s knowledge, there has never been any Commission determination of the procedures that would, could or should be used in such a hearing or the factors that would be relevant and entitled to weight in a satellite comparative process. Thus, the Commission has no way of knowing whether a comparative satellite hearing would result in additional delays or that the prevailing applicants would be those that value licenses most highly.

competition, avoiding concentration of licenses; 3) recovery for the public of a portion of the value of the spectrum made available for commercial use; and 4) efficient and intensive use of the electromagnetic spectrum. Those objectives are not all served by the use of auctions for international satellite systems, such as the Little LEO systems.

An auction for the Little LEO licensees will not hasten the development or deployment of new services. In order to be able to provide a truly global service, global satellite systems must obtain licenses from every country of the world. There is no single licensing procedure by which a system operator can obtain all of the licenses it needs to operate a global system, and it is clear that no such procedure is likely to be adopted in the foreseeable future. If there were such a single process, the use of auctions as a means of awarding licenses for global satellite systems could be compared to the use of auctions for services such as PCS in the U.S., where auctions have been successfully conducted and where, upon conclusion of the auction, the successful applicant had the necessary authority to go out and construct its system to serve its proposed territory.

Auctions were embraced by the Commission in part because it concluded that alternative methods of selecting between mutually exclusive, qualified applicants were time consuming and expensive. In domestic communications services the selection process has been simplified and expedited using auctions. However, because global MSS licenses are needed in every country, **use of an auction procedure to award Little LEO licenses in the U.S. will not lead to a rapid development or deployment of this new global service.** All the auction will do is give the successful bidder the first license of the approximately 200 licenses it needs.

There is no reason to believe that auctions for the Little LEO service will result in the public recapturing the “value” of the spectrum. National auctions do not provide a guarantee of access to any given spectrum. Thus, it would be virtually impossible for a potential bidder competing for global satellite spectrum to place a value on a given country’s license at the time of any auction. Generally, the price that would be required to be paid at auction in a given country would not be related to the “value” of the spectrum or of the service to that country. Instead, it would more likely be related to the timing of the auction within the sequence of auctions to be conducted in a region or in the world and/or to other factors that are irrelevant to a licensing process or to the nature of the service to be provided. Indeed, it is likely that applicants facing their very first auction in the U.S. would be conservative in their bidding, recognizing the incalculable costs they must be prepared to pay to other countries that follow the U.S. lead. As the Chief of the FCC’s International Bureau has reportedly stated, “The value [of the license] gets distorted in a sequential auction.”

Auctions do not promote the best or most efficient use of the spectrum. In the auctions process there is no analysis of the applicants’ proposed use of the spectrum. Auctions focus not on the merits of the specific proposals in applications but only on the participants’ willingness and ability to pay. Auctions also discourage innovation and discourage shared use of the spectrum.

Not only are the public interest objectives discussed above not served by auctions for Little LEO services, but there are other public interest reasons why the Commission should not use auctions for this or any other international satellite service. The Commission recognizes that auctions for transnational satellite services raise issues that

are considerably more complex and difficult than issues raised by terrestrial auctions. Specifically, the Commission observes that, if it auctions licenses for Little LEO services in the U.S., providers are likely to face a series of sequential auctions in other countries. The Commission has requested comment on the likelihood that other countries may use competitive bidding to award licenses. Iridium cannot prove to the Commission that if the U.S. auctions satellite licenses other countries will follow suit. As the Commission already knows, some countries have, following the FCC's lead, enacted legislation to provide for auctioning of spectrum and/or licenses. To date, Iridium is not aware of any auctions for licenses for global MSS, but the issue has been and is being raised.

Iridium and its investors routinely field questions about how the FCC is handling or has handled all aspects of its licensing process – from application filing and regulatory fees to blanket licensing of terminals to the negotiated rulemaking proceeding. These questions are raised because many countries are following the U.S. lead in establishing their own licensing rules and procedures. Iridium believes that, if the FCC auctions mobile satellite licenses or spectrum, there is no question that countries that want to follow the U.S. will do so in this as well. Even countries that do not intend generally to follow the U.S. lead are likely to do so in licensing U.S. MSS systems, since they will not want the U.S. to be the sole beneficiary of revenues to be generated from auctioning of licenses for global service.

Thus, a decision by the U.S. to auction Little LEO licenses would have repercussions for the existing Big LEOs that are still seeking licenses from other countries. As Iridium and other parties, including the Satellite Industry Association (SIA), of which Iridium is a member, have already demonstrated to the Commission, having to participate

in multiple auctions worldwide to obtain the necessary licenses to operate a global system would result in increased risks and uncertainty in the licensing and coordination processes, could lead to substantial delays in the licensing process, would make it impossible to predict or calculate total costs, and could discourage investment in global projects such as the Big and Little LEO systems. The use of auctions also threatens the goal of universal, affordable service to all areas and countries.


The Commission has a statutory obligation to consider other options before employing auctions. See 47 U.S.C. §309 (j)(6)(E). It is clear that the potential harm auctions in this service could cause to these and other satellite licensees, applicants, and businesses far outweighs any articulated benefit. The Commission should therefore explore and consider all other options for resolving mutual exclusivity in this proceeding.

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December 20, 1996

Respectfully submitted,
IRIDIUM LLC

By:


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CERTIFICATE OF SERVICE

I, Theresa Pullan, do hereby certify that on this 20th day of December, 1996,
true copies of the foregoing "Comments of Iridium LLC" are being sent via first-class U.S.
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